

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
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JOSEPH P. MCMAHON,

Plaintiff,

- against -

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,

Defendant.
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16-CV-1997 (VSB) (DCF)

ORDER

VERNON S. BRODERICK, United States District Judge:

Plaintiff Joseph P. McMahon brings this action pursuant to § 205(g) of the Social Security Act, 42 U.S.C. § 405(g), seeking judicial review of a final decision of Defendant the Acting Commissioner of Social Security (the “Acting Commissioner”)¹ denying his application for supplemental security income and disability insurance benefits. (Doc. 1.) On October 3, 2016, Plaintiff moved for judgment on the pleadings, seeking an order reversing the Acting Commissioner’s determination or, in the alternative, remanding for a new hearing and further development of the record. (Docs. 14, 15.) On December 2, 2016, Defendant cross-moved for judgment on the pleadings, seeking affirmance of her final decision. (Doc. 18.) This case was referred to Magistrate Judge Debra Freeman on May 17, 2016, for a report and recommendation on the cross-motions. (Doc. 11.) Judge Freeman issued her Report and Recommendation on August 18, 2017 (“Report and Recommendation” or “R&R”). (Doc. 22.) Neither party filed an objection.

¹ While the caption of this case has not been changed, I note that Carolyn W. Colvin is no longer the Acting Commissioner of Social Security and that, on January 23, 2017, Nancy Berryhill became Acting Commissioner.

Before me is Judge Freeman's unobjected to Report and Recommendation, which recommends that the case be remanded for further analysis and development of the record. Judge Freeman's R&R is thorough and detailed, and I accept its findings and recommendations, and direct that this case be remanded consistent with the findings in the Report and Recommendation.

In reviewing a magistrate judge's report and recommendation, a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Parties may raise specific, written objections to the report and recommendation within 14 days of being served with a copy of the report. *Id.*; *see also* Fed. R. Civ. P. 72(b)(2). When a party submits a timely objection, a district court reviews de novo the parts of the report and recommendation to which the party objected. 28 U.S.C. § 636(b)(1); *see also* Fed. R. Civ. P. 72(b)(3). When neither party submits an objection to a report and recommendation, or any portion thereof, a district court reviews the report and recommendation for clear error. *Lewis v. Zon*, 573 F. Supp. 2d 804, 811 (S.D.N.Y. 2008); *Wilds v. United Parcel Serv., Inc.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003); *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985).

Here, the Report and Recommendation was filed on August 18, 2017. Although the Report and Recommendation explicitly provided that "the parties shall have fourteen (14) days from service of this Report and Recommendation to file written objections," (R&R 78), neither party filed an objection. I therefore reviewed Judge Freeman's thorough and well-reasoned Report and Recommendation for clear error and, after careful review of the record, found none. Accordingly, I adopt the Report and Recommendation in its entirety. Plaintiff's motion for judgment on the pleadings, (Doc. 14), is granted in part, Defendant's motion for judgment on the

pleadings, (Doc. 18), is denied, and this case is remanded pursuant to sentence four of 42 U.S.C. § 405(g) for further proceedings consistent with the Report and Recommendation. (*See* R&R 73–76.)

The Clerk’s Office is respectfully directed to terminate the motions at Docs. 14 and 18, and to enter judgment accordingly and close the case.

SO ORDERED.

Dated: April 25, 2018
New York, New York


Vernon S. Broderick
United States District Judge